

1 **ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**

2 **DEPARTMENT OF LABOR**

3 **OFFICE OF WORKERS' CLAIMS**

4 **(Amendment)**

5 **803 KAR 25:021. Individual self-insurers.**

6 RELATES TO: KRS 342.0011, 342.340, 342.342, 342.345, 342.347

7 STATUTORY AUTHORITY: KRS 342.260(1), 342.340, 342.345

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires
9 the Executive Director [~~Commissioner~~] of the Office [~~Department~~] of Workers'
10 Claims to promulgate administrative regulations necessary to implement KRS
11 Chapter 342. KRS 342.340 and 342.345 require the executive director
12 [~~commissioner~~] to establish requirements for individual self-insurers. This
13 administrative regulation establishes minimum requirements for an individual
14 employer who self-insures workers' compensation liability.

15 Section 1. Definitions. (1) "Cessation liability security" means the security
16 covering liability associated with anticipated claims occurring upon cessation of
17 all operations of an individual self-insurer in the state.

18 (2) "Executive Director [~~Commissioner~~]" is defined by KRS 342.0011(9).

19 (3) "Employer" means an employer subject to KRS Chapter 342.

20 (4) "Guarantor" means a parent company whose financial statement is
21 used by the applicant to obtain self-insurance status.

1 (5) "Service organization" means a person or entity which provides
2 services including claims adjustment, safety engineering, computation of
3 statistics, preparation of loss or tax reports, purchase of excess insurance, or
4 preparation of another required self-insurance report.

5 (6) "Specific excess insurance" means an insurance policy which insures
6 the amount of a claim from one (1) occurrence involving one (1) or more
7 employees or employers in the same occurrence or incident of exposure in
8 excess of a specified dollar amount.

9 Section 2. Certification. A person, party, or employer shall not act as or
10 hold itself out as an approved individual self-insurer unless the employer has
11 been approved by the executive director ~~[commissioner]~~. A certification issued by
12 the executive director ~~[commissioner]~~ shall remain in effect until ~~[on an annual~~
13 ~~basis, unless otherwise]~~ revoked or modified by the executive director pursuant
14 to Section 11 of this administrative regulation.

15 Section 3. Application. (1) An initial application for individual self-insurance
16 shall be submitted to the executive director ~~[commissioner]~~ on form SI-02 and
17 shall include:

18 (a) The employer's name, location of its principal office, date of
19 organization, identification of its immediate parent organization, if any, and its
20 ultimate parent, the percentage shareholder ownership of its immediate parent
21 organization, identification of its fiscal year and federal identification number. A
22 subsidiary which is to be covered under the application, or who is already self-
23 insured, shall be identified with the relationship to the applicant described fully;

1 (b) A statement of the principal business activities engaged in Kentucky by
2 the applicant including a list of site locations and number of employees at each
3 site;

4 (c) The proposed specimen specific excess insurance policy, identifying
5 the insurance company, attachment points and limits of liability. A copy of the
6 policy or certificate of insurance shall be received by the executive director
7 ~~[commissioner]~~ at least five (5) days prior to certification of self-insurance;

8 (d) A copy of the proposed surety deposit or letter of credit instrument
9 required by Section 5 of this administrative regulation. The surety shall be
10 received by the executive director ~~[commissioner]~~ prior to certification to self-
11 insure;

12 (e) A schedule of projected workers' compensation claim liabilities and
13 annual payment requirements for the three (3) years preceding the application;

14 (f) An estimate of annual payroll and a statement of loss runs;

15 (g) A certified audit report of the applicant's financial status for three (3)
16 calendar years immediately preceding the application, prepared and executed by
17 a certified public accountant;

18 (h) If the applicant is a corporation, a resolution by the board of directors,
19 authorizing and directing the corporation to undertake to self-insure;

20 (i) If the applicant is a subsidiary corporation, a guarantee from the
21 subsidiary's parent corporation on form SI-01;

22 (j) An individual or service organization responsible for administration or
23 adjustment of a workers' compensation claim shall provide satisfactory evidence

1 to the executive director [~~commissioner~~] as to the organization's qualifications to
2 administer and adjust a workers' compensation claim; and

3 (k) If a service organization is used, a statement from the service
4 organization and self-insured employer stating that the contract between the two
5 (2) parties meets the requirement set forth in subsection (4) of this section.

6 (2) An applicant may perform, if qualified, a function of a service
7 organization or may contract with a service organization to perform these
8 functions. An applicant's or service organization's employees and agents shall be
9 duly licensed to perform those functions for which a license is required by
10 Kentucky law.

11 (3) The application shall be filed no later than thirty (30) days prior to the
12 proposed inception date of self-insurance. Upon receipt of a complete application
13 and all required documents, the executive director [~~commissioner~~] shall approve
14 or reject status as a self-insurer within thirty (30) days.

15 (4) A contract with a service organization shall include one (1) of the
16 following provisions:

17 (a) The service organization shall adjust to a final conclusion each claim
18 that results from an occurrence during the period for which the contract is
19 effective unless a substitute service organization has been procured; or

20 (b) The service organization shall adjust each claim for a period of sixty
21 (60) days following an order from the executive director [~~commissioner~~] finding
22 the self-insured employer in default unless a substitute service organization has
23 been procured.

(5) Variation from the requirements of this section, for good cause shown, may be sought by application to the executive director ~~[commissioner]~~.

Section 4. Approval. (1) In determining whether an applicant is eligible for self-insurance and in establishing the amount of surety required, the executive director ~~[commissioner]~~ shall consider all relevant factors including the following:

- (a) The financial strength of the applicant or guarantor;
- (b) The excess insurance policy and retention level;
- (c) The experience of the service organization;
- (d) The ratio of current assets to current liabilities, the ratio of long-term debt to net worth, and shareholder equity;
- (e) Profit and loss history;
- (f) Workers' compensation loss history of the applicant;
- (g) The prospect of increased losses by the employer's cessation of operations in Kentucky;
- (h) The number of employees and degree of hazard to which employees are exposed;
- (i) Safety programs; and
- (j) Use of an approved managed care plan for treatment of injured workers.

(2) In order to be certified as an individual self-insurer, the applicant or guarantor shall have assets in excess of all liabilities of at least \$10,000,000 ~~[\$3,000,000]~~. Variance from this requirement may be granted to a currently

1 certified individual self-insurer who has demonstrated excellent claims paying
2 capability and over-all financial stability.

3 (3) Approval shall be granted if the executive director [~~commissioner~~]:

4 (a) Finds the applicant has complied with all sections of this administrative
5 regulation; and

6 (b) Is satisfied that the persons responsible for the operations of the
7 applicant are financially stable, competent, and experienced in the administration
8 of workers' compensation self-insurance.

9 Section 5. Specific Excess Insurance and Surety Requirements. (1)

10 Specific excess insurance shall be purchased with:

11 (a) a coverage limit of at least \$10,000,000 per occurrence, and

12 (b) a maximum retention level of \$1,000,000 unless a different retention
13 level is specifically approved by the executive director.

14 (2)(a) To be eligible to write specific excess insurance for an individual
15 self-insurer in Kentucky, a casualty insurance company on its latest financial
16 statement shall reflect a minimum policyholder surplus of not less than
17 \$25,000,000.

18 (b) The casualty insurance company shall have demonstrated excellent
19 overall performance and a strong ability to meet its obligations to policyholders
20 over an extended period of time.

21 (3) Each employer who qualifies for a self-insurance certificate shall, prior
22 to the certificate being issued, provide primary security in the form of a
23 continuous surety bond on Form SI-03 or by irrevocable letter of credit on form

1 SI-04, in an amount specified by the executive director ~~[commissioner]~~, but not
2 less than \$500,000. In fixing the amount of security, the executive director
3 ~~[commissioner]~~ shall consider all relevant factors including liability associated
4 with anticipated claims occurring upon the cessation of all operations by the
5 individual self-insurer in the state of Kentucky. The executive director
6 ~~[commissioner]~~ may direct that separate cessation liability security be deposited
7 pursuant to Section 8 of this administrative regulation. The amount shall be
8 reviewed and recalculated at the same times as the primary security.

9 (4) In lieu of a bond with security or letter of credit, the employer may
10 deposit cash or securities through submission of SI-05 in an amount specified by
11 the executive director ~~[commissioner]~~, but not less than \$500,000. To be
12 acceptable, a security which is deposited shall be eligible under the laws of
13 Kentucky for investment by insurance companies.

14 (5) If an employer is no longer self-insured, the amount of surety shall be
15 set by the executive director; however,

16 (a) a minimum surety of \$250,000 shall be maintained for a period of ten
17 (10) years, and

18 (b) a minimum surety of \$100,000 shall be maintained for the eleventh to
19 twentieth year after the employer's departure from self-insured status.

20 Section 6. Coverage of Subsidiary or Related Corporations. A corporation
21 having a wholly-owned subsidiary may submit one (1) joint application to the
22 executive director ~~[commissioner]~~, if the parent corporation has sufficient assets
23 to qualify for a self-insurance certificate for both itself and the subsidiary. A joint

1 application shall be accompanied by a certificate of the secretary of each
2 corporation indicating that their respective boards of directors have by resolution
3 authorized joint and several liability for all the workers' compensation claims
4 asserted against them. These certificates shall be effective until revoked by the
5 corporations following thirty (30) days written notice to the executive director
6 ~~[commissioner]~~.

7 Section 7. Examination and Review of Filings. A certified public
8 accountant or other qualified individual may be employed by the Office
9 ~~[Department]~~ of Workers' Claims for the purpose of reviewing and analyzing the
10 annual filings of individual self-insurers, and applicants for self-insurance, and for
11 making recommendations based on that review.

12 Section 8. Cessation Liability Security. (1) Cessation liability security shall
13 be distinct from the primary security required in Section 5 of this administrative
14 regulation.

15 (2) Upon cessation of all operations of an individual self-insurer in the
16 state of Kentucky, cessation liability security shall be called for payment of a
17 claim after all other security posted by the individual self-insurer has been
18 exhausted.

19 (3) Cessation liability security shall be issued in one (1) or more of the
20 following forms:

21 (a) A surety bond or insurance policy issued by a casualty insurance
22 company qualified pursuant to Section 5 of this administrative regulation;

23 (b) An escrow account; or

1 (c) An irrevocable letter of credit.

2 (4) If an individual self-insurer secures its workers' compensation
3 obligation by obtaining standard workers' compensation insurance or by joining
4 an approved self-insurance group, the executive director [~~commissioner~~] may
5 release the cessation liability security, effective as of the date of the employers
6 acquiring other coverage.

7 Section 9. Annual filings. (1) An individual self-insured employer shall file
8 with the executive director [~~commissioner~~] on or before 120 days from the end of
9 the self-insured's fiscal year:

10 (a) The statement of financial condition required by KRS 342.347(2);

11 (b) Total payroll for the prior calendar year, the projected payroll for the
12 next year by quarter, and other reasonable information requested by the
13 executive director [~~commissioner~~], including relevant claim data; and

14 (c) If a service organization is used, a statement from the service
15 organization and self-insured employer stating that the contract between the two
16 (2) parties meets the requirement set forth in Section 3(4) of this administrative
17 regulation.

18 (2) At least ten (10) days prior to the end of each self-insurance year, the
19 individual self-insurer shall file proof of specific excess insurance for the following
20 year with the executive director [~~commissioner~~].

21 (3) If the annual required filings are not timely made, the self-insurance
22 certificate shall not be renewed.

1 Section 10. Change in Ownership; Subsidiaries; Mergers and Acquisitions.

2 (1) If there is a change in majority ownership of a parent company, the individual
3 self-insurer shall notify the executive director [~~commissioner~~] within thirty (30)
4 days of that change. A new application to self-insure shall be filed upon a change
5 in ownership.

6 (2) If an employer is added, merged, acquired, or otherwise brought within
7 the self-insurance coverage, the individual self-insured shall notify the executive
8 director [~~commissioner~~] within thirty (30) days and the adequacy of the surety
9 bond shall be reviewed and may be increased accordingly.

10 (3) If the payroll of the individual self-insurer during a quarter exceeds 125
11 percent of the projection previously filed, the individual self-insurer shall
12 immediately report that change to the executive director [~~commissioner~~] and the
13 surety bond requirements may be reviewed and the bond shall be increased
14 accordingly.

15 Section 11. Revocation or Modification of Certification. (1) If the executive
16 director [~~commissioner~~] receives information furnishing reasonable grounds to
17 believe that the individual self-insurer is not meeting, or may not be able to timely
18 meet, all of its obligations arising under KRS Chapter 342 or this administrative
19 regulation, a show cause order shall be issued to the individual self-insurer
20 detailing the purported deficiency and setting a time and place for hearing.

21 (2) The executive director [~~commissioner~~] may revoke the self-insurance
22 certification upon a finding that any of the following conditions exist:

23 (a) The individual self-insurer is operating in:

1 1. Contravention of its submitted application; or

2 2. In material violation of this administrative regulation;

3 (b) The individual self-insurer or parental guarantor no longer has the
4 financial stability to assure its ability to meet its obligations for the payment of
5 workers' compensation benefits; or

6 (c) The insurer has failed or refused to provide access to the books and
7 documents relating to the self-insurance activities of the entity.

8 (3) If the executive director [~~commissioner~~] revokes an individual self-
9 insurer's certification, the executive director [~~commissioner~~] shall notify either the
10 Kentucky individual self-insurance guaranty fund or the Kentucky coal employers'
11 self-insurance guaranty fund.

12 (4) Self-insurance certification may be revoked by the executive director
13 [~~commissioner~~] after issuance of a show cause order setting forth the grounds of
14 revocation and setting a hearing date in not less than ten (10) days. The hearing
15 shall be conducted pursuant to Section 12 of this administrative regulation.
16 During the pendency of a hearing or appeal, the executive director
17 [~~commissioner~~] may utilize the surety deposit provided by the individual self-
18 insurer to make a payment of workers' compensation benefits which is currently
19 due for which a payment is not being made by the individual self-insurer or its
20 service organization.

21 Section 12. Aggrieved Parties. (1) A person aggrieved by an action of the
22 executive director [~~commissioner~~] may request a hearing by filing a written
23 request with the executive director [~~commissioner~~] setting forth the basis. Upon

1 receipt of a request, the executive director [~~commissioner~~] shall issue a notice of
2 hearing to be held no sooner than ten (10) days and no later than thirty (30) days
3 after the notice.

4 (2) No later than thirty (30) days after the termination of the hearing, the
5 executive director [~~commissioner~~] shall issue a written order addressing all
6 matters involved at the hearing and serve a copy of the order upon each party.
7 The order shall contain a concise findings of fact and conclusions of law. The
8 executive director's [~~commissioner's~~] final order may revoke or modify a self-
9 insurance certification or allow an employer to continue to self-insure subject to
10 certain terms and conditions .

11 (3) The ruling of the executive director [~~commissioner~~] may be appealed to
12 the Franklin Circuit Court in accordance with KRS 13B.140.

13 Section 13. Incorporation by Reference. (1) The following material is
14 incorporated by reference:

15 (a) Form S-01 (December, 1999 edition);

16 (b) Form S-02 (January, 2000 edition);

17 (c) Form S-03 (July, 2000 edition);

18 (d) Form S-04 (June, 2000 edition); and

19 (e) Form S-05 (June, 2000).

20 (2) This material may be inspected, copied, or obtained, subject to
21 applicable copyright law, at the Office [~~Department~~] of Workers' Claims,
22 Prevention Park, 657 Chamberlin [~~To Be Announced~~] Avenue, Frankfort,
23 Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

William P. Emrick, Executive Director
Office of Workers' Claims

Date

A public hearing on this administrative regulation shall be held on July 22, 2005, at 10:00 a.m. (EST) at the offices of the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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